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HOUSE BILL 539

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Don Tripp

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

**RELATING TO UTILITIES; REQUIRING WATER CONSERVATION PLANS FOR
CERTAIN ELECTRIC POWER GENERATING PLANTS; PRESCRIBING APPROVAL
PROCEDURES; CHANGING RULING DEADLINES AND THE SIZE OF PLANTS
SUBJECT TO LOCATION APPROVAL.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 62-9-3 NMSA 1978 (being Laws 1971,
Chapter 248, Section 1, as amended) is amended to read:**

"62-9-3. LOCATION CONTROL--LIMITATIONS.--

**A. The legislature finds that it is in the public
interest to consider any adverse effect upon the environment
and upon the quality of life of the people of the state that
may occur due to plants, facilities and transmission lines
needed to supply present and future electrical services. It is
recognized that such plants, lines and facilities will be**

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1 needed to meet growing demands for electric services and cannot
2 be built without in some way affecting the physical environment
3 where these plants, facilities and transmission lines are
4 located. The legislature therefore declares that it is the
5 purpose of this section to provide for the supervision and
6 control by the commission of the location within this state of
7 new plants, facilities and transmission lines for the
8 generation and transmission of electricity for sale to the
9 public.

10 B. ~~[No]~~ A person, including ~~[any]~~ a municipality,
11 shall not begin the construction of ~~[any]~~ a plant designed for
12 or capable of operation at a capacity of ~~[three hundred]~~ fifty
13 thousand kilowatts or more for the generation of electricity
14 for sale to the public within or without this state, whether or
15 not owned or operated by a person that is a public utility
16 subject to regulation by the commission, or of transmission
17 lines in connection with such a plant, on a location within
18 this state unless the location has been approved by the
19 commission. For the purposes of this section, "transmission
20 line" means ~~[any]~~ an electric transmission line and associated
21 facilities designed for or capable of operations at a nominal
22 voltage of two hundred thirty kilovolts or more, to be
23 constructed in connection with and ~~[to]~~ transmit electricity
24 from a new plant for which approval is required.

25 C. Application for approval shall contain all

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1 information required by the commission to make its
2 determination, be made in writing setting forth the facts
3 involved and be filed with the commission. The commission
4 shall, after a public hearing and upon notice as the
5 commission may prescribe, act upon the application. The
6 commission may condition its approval upon a demonstration by
7 the applicant that it has received all necessary air and
8 water quality permits.

9 D. ~~[No]~~ An approval pursuant to this section
10 shall not be required for:

11 (1) construction in progress on the
12 effective date of this section or for additions to or
13 modifications of an existing plant or transmission line; or

14 (2) plants that have received, by January 1,
15 2003, the following permits, approvals or authorizations, if
16 applicable:

17 (a) an authority to construct permit
18 pursuant to the Air Quality Control Act;

19 (b) a ground water discharge permit
20 pursuant to the Water Quality Act;

21 (c) a county site development plan
22 approval; and

23 (d) Indian tribal or pueblo government
24 permits.

25 E. The commission shall approve the application

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1 for the location of the generating plant unless the
2 commission finds that the operations of the facilities for
3 which approval is sought will not be in compliance with all
4 applicable air and water pollution control standards and
5 regulations existing. The commission shall not require
6 compliance with performance standards other than those
7 established by the agency of this state having jurisdiction
8 over a particular pollution source.

9 F. The commission shall approve the application
10 for the location of the transmission lines unless the
11 commission finds that the location will unduly impair
12 important environmental values.

13 G. ~~No~~ An application shall not be approved
14 pursuant to this section ~~which~~ if it violates an existing
15 state, county or municipal land use statutory or
16 administrative regulation unless the commission finds that
17 the regulation is unreasonably restrictive and compliance
18 with the regulation is not in the interest of the public
19 convenience and necessity, in which event and to the extent
20 found by the commission the regulation shall be inapplicable
21 and void as to the siting. When it becomes apparent to the
22 commission that an issue exists with respect to whether a
23 regulation is unreasonably restrictive and compliance with
24 the regulation is not in the interest of public convenience
25 and necessity, it shall promptly serve notice of that fact by

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1 certified mail upon the agency, board or commission having
2 jurisdiction for land use of the area affected and shall make
3 the agency, board or commission a party to the proceedings
4 upon its request and shall give it an opportunity to respond
5 to the issue. The judgment of the commission shall be
6 conclusive on all questions of siting, land use, aesthetics
7 and any other state or local requirements affecting the
8 siting.

9 H. Nothing in this section shall be deemed to
10 confer upon the commission power or jurisdiction to regulate
11 or supervise any person, including a municipality, that is
12 not otherwise a public utility regulated and supervised by
13 the commission, with respect to its rates and service and
14 with respect to its securities, nor shall any other provision
15 of the Public Utility Act be applicable with respect to such
16 a person, including a municipality.

17 I. The commission shall issue its order granting
18 or denying the application within [~~six~~] nine months from the
19 date the application is filed with the commission. Failure
20 to issue its order within [~~six~~] nine months is deemed to be
21 approval of the application; provided, however, that the
22 commission may extend the time for granting approval for a
23 transmission line that is subject to this section for an
24 additional ten months upon finding that the additional time
25 is necessary to determine if the proposed location of the

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1 line will unduly impair important environmental values."

2 Section 2. A new section of the Public Utility Act is
3 enacted to read:

4 "[NEW MATERIAL] ELECTRIC POWER GENERATING PLANTS--WATER
5 CONSERVATION PROVISIONS-- APPROVAL PROCESS. --

6 A. Notwithstanding the provisions of Subsection H
7 of Section 62-9-3 NMSA 1978, a person, including a
8 municipality, shall not begin construction or expansion of an
9 electric power generating plant that will consumptively use
10 more than one hundred acre-feet of water in a year for the
11 sale of electricity to the public within or without this
12 state, whether or not owned or operated by a person that is a
13 public utility subject to regulation by the commission,
14 unless that person has submitted to the commission an
15 application for that construction or expansion that has been
16 approved by the commission. In considering an application to
17 construct or expand an electric power generating plant, the
18 commission shall require the applicant to submit a water
19 utilization plan that:

20 (1) compares alternate water management
21 practices, including effects on capital and operating costs,
22 water use, wastewater management and energy efficiency; and

23 (2) includes information about alternative
24 power plant cooling methods, including dry cooling, hybrid
25 wet-dry cooling and the use of produced or other sources of

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1 waste or degraded water.

2 B. The commission shall submit the water
3 utilization plan to the state engineer. Within forty-five
4 days, the state engineer shall evaluate the proposed water
5 utilization plan and provide the commission with a
6 determination of whether the proposed plan is consistent with
7 the conservation of water within the state. The state
8 engineer may recommend to the commission any alternatives for
9 consideration and shall comment on whether the plan meets the
10 criteria set forth in Subsection C of this section.

11 C. The commission shall develop criteria for
12 evaluating electric power generating plant water utilization
13 plans and shall reject an application that in its judgment
14 does not meet the criteria. The criteria shall include:

15 (1) total all-in life-cycle costs for water
16 acquisition, treatment, pumping, use and disposal;

17 (2) total all-in life-cycle costs for
18 construction and operating costs;

19 (3) estimated impact of these costs on the
20 retail cost of electric power;

21 (4) energy efficiency gains or losses; and

22 (5) any other derivative effects such as air
23 pollution increases or decreases.

24 D. An applicant shall provide the commission at
25 the time of filing the application with the commission proof

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1 that notice of the application, including a description of
2 the proposed construction or expansion and how to obtain
3 further information, has been:

4 (1) provided by certified mail to the owners
5 of record, as shown by the most recent property tax schedule,
6 of all properties within one-half mile of the property on
7 which the construction or expansion is proposed to be located
8 on or before the newspaper publication date required by this
9 subsection;

10 (2) provided by certified mail to all
11 municipalities and counties and tribal organizations within a
12 ten-mile radius of the property on which the construction or
13 expansion is proposed to be located on or before the
14 newspaper publication date required by this subsection;

15 (3) published once in a newspaper of general
16 circulation in the county in which the property on which the
17 construction or expansion is proposed to be located; provided
18 that this notice shall appear in either the classified or
19 legal advertisements section of the newspaper and at one
20 other place in the newspaper calculated to give the general
21 public the most effective notice, and shall be printed in
22 both English and Spanish;

23 (4) posted in at least four publicly
24 accessible and conspicuous places on or before the newspaper
25 publication date required by this subsection, including the

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1 entrances to the existing or proposed power plant, if the
2 entrance is publicly accessible and conspicuous;

3 (5) mailed to all persons who have made a
4 written request to the commission for notice of this
5 application on or before the newspaper publication date
6 required by this subsection; and

7 (6) mailed by certified mail to all persons
8 on a list that shall be maintained by the commission of
9 individuals and organizations who have requested notice of
10 applications made pursuant to this section.

11 E. Within thirty days of receiving a
12 determination from the state engineer pursuant to Subsection
13 B of this section, the commission shall establish a date for
14 a public hearing on the application. At least thirty days
15 but no more than forty-five days prior to that date, the
16 commission shall provide public notice of the date, location
17 and subject of the hearing. The notice shall be distributed
18 according to the public notice requirements described in
19 Subsection D of this section.

20 F. The commission shall issue its order granting
21 or denying the application within nine months of the date the
22 application is filed with the commission. If the commission
23 does not issue its order within the nine months, the
24 application shall be deemed approved.

25 G. The information required to be submitted

1 pursuant to this section and the findings required by this
2 section are supplemental to and do not supersede information
3 and findings otherwise required by law.

4 H. The requirements of this section apply only to
5 electric power generating units placed into service on or
6 after January 1, 2003. In addition, any expansion of an
7 electric power generating plant that has been placed into
8 service prior to January 1, 2003 and that results in a plant
9 capacity of three hundred thousand kilowatts or less is
10 exempted from the requirements of this section. "

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